

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GERALD GREEN,

Petitioner,

v.

PEOPLE OF THE STATE OF NEW YORK,

Respondent.

Hon. Hugh B. Scott

05CV810

(CONSENT)

Order

Before the Court is petitioner's Petition for Habeas Corpus (Docket No. 1). But, as noted by the respondent named in this Petition (see Docket No. 4, Memo. of Law at 1-2), petitioner failed to name the correct party as respondent. Instead of naming the person who has custody over him, petitioner named the People of the State of New York. Rule 2 of the Rules Governing § 2254 cases requires the Petition be brought against the state officer having custody of the petitioner. 28 U.S.C. § 2254, Rules Governing R. 2(a); see also 28 U.S.C. § 2243 (the writ of habeas corpus "shall be directed to the person having custody of the person detained"). Absent an amended Petition naming the proper respondent, this Court lacks personal jurisdiction over this matter, Stanley v. California Sup. Ct., 21 F.3d 359, 360 (9th Cir. 1994) (per curiam); see Padilla v. Bush, 542 U.S. 426, 447 (2004).

As a result, petitioner is ordered to amend his Petition to name the appropriate respondent. If petitioner fails to file such an amendment within thirty (30) days, the Court will dismiss the Petition for lack of jurisdiction.

So Ordered.

/s/ Hugh B. Scott
Honorable Hugh B. Scott
United States Magistrate Judge

Dated: Buffalo, New York
August 9, 2006